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REMARKS

In view of the following discussion, Applicant submits that none of the claims now pending in the application are non-enabling, anticipated, or obvious under the respective provisions of 35 U.S.C. §112, §102, and §103. Thus Applicant believes that all of these claims are now in allowable form.

It is to be understood that the Applicant does not acquiesce to the Examiner's characterizations of the art of record or to Applicant's subject matter recited in the pending claims. Further, Applicant is not acquiescing to the Examiner's statements as to the applicability of the prior art of record to the pending claims by filing this Response.

Applicant's Agent, Joseph Pagnotta, graciously thanks Examiner Hanh N. Nguyen for the telephone interview of September 7, 2004 to discuss merits of the case. Applicant's Agent is aware of the time constraints placed on the Examiner and appreciates the opportunity to bring the outstanding issues to quick resolution in this manner. The details of the telephone interview follow.

REJECTION OF CLAIMS UNDER 35 U.S.C. §103(a)

The Examiner rejected claims 1-8 under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 6,707,796, issued March 16, 2004 to Li (hereinafter Li) in view of the U.S. Patent No. 6,173,324, issued January 9, 2001 to D'Souza (hereinafter D'Souza).

Specifically, the Examiner offered that Lee discloses, in FIG. 4, two node groups (a plurality of areas) represented by MSP1 and MSP2 routers and an interconnecting backbone using OSPF protocol. The Examiner offered various steps shown in FIG. 7 to determine if a router is in a list of routers and adding such router to the list if it is elected as a newly designated router. However, the Examiner indicated that Li does not disclose if a virtual link cannot be established through the router then establishing a virtual link through a neighbor router to the backbone. The Examiner continues to offer that D'Souza discloses in FIG. 1 that

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when a new router is added into its network 10, routers in the network establish new connections to router data packets by using OSPF (per Column 2, Lines 55-65). A monitor 21 monitors routers by detecting connectivity faults and determines a new route which is added into the network for forwarding data packets which allegedly meets the claimed feature of "if a virtual link cannot be established through a router, establishing a virtual link through a neighbor router to the backbone" per Column 3, Lines 25-45. Accordingly, the Examiner concludes that since D'Souza includes the addition of routers interconnected via additional links it would have been obvious to one skilled in the art to combine D'Souza with Li by interconnecting known groups G via the MSP routers and the additional links. The monitor 21 is used to monitor border routers in order to detect a new condition if one of the border routers fall to forward data to another portion of the network. The Examiner offers the motivation of configuring the network by determining the shortest paths using OSPF protocol when link or a border router is added or deleted. The rejection is respectfully traversed.

The test under 35 U.S.C. § 103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Thus, it is impermissible to focus either on the "gist" or "core" of the invention, Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 USPQ 416, 420 (Fed. Cir. 1986) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added).

The references must be taken in their entireties, including those portions which argue against obviousness. Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc., 230 U.S.P.Q. 416, 420 Fed. Cir. 1986). It is impermissible within the framework of the 35 U.S.C. § 103 to pick and choose from a reference only so much of it as will support a conclusion of obviousness to the exclusion of

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other parts necessary to a full appreciation of what the reference fairly suggests to one skilled in the art. Id. at 419.

For prior art reference to be combined to render obvious a subsequent invention under 35 U.S.C. § 103, there must be something in the prior art as a whole which suggests the desirability, and thus the obviousness, of making the combination. Uniroyal v. Rudkin-Wiley, 5 U.S.P.SQ.2d 1434, 1438 (Fed. Cir. 1988). The teachings of the references can be combined only if there is some suggestion or incentive in the prior art to do so. In re Fine, 5 U.S.P.SQ.2d 1596, 1599 (Fed. Cir. 1988). Hindsight is strictly forbidden. It is impermissible to use the claims as a framework to pick and choose among individual references to recreate the claimed invention Id. at 1600; W.L. Gore Associates, Inc., v. Garlock, Inc., 220 U.S.P.Q. 303, 312 (Fed. Cir. 1983).

Specifically, and with regard to each of independent claims 1, 3, 4, 5, 7 and 8, it is respectfully submitted that D'Souza falls short in its alleged teachings; thus, the motivation to combine same with Li is insubstantial to arrive at any conclusion of obviousness. Per the title and abstract of D'Souza, this reference teaches and discloses a fault detection system. The fault detection system monitors a data network 10 via a processor 21 to determine new and missing route destination sessions and OSPF adjacencies by executing a variety of subroutines. Information from a previously run subroutine is checked against a subsequently run subroutine and the differences are compared by way of a reference file. (See Column 4, Line 58-Column 5, Line 3.) If there are differences in the reference file between the two executions of the subroutine an alarm is sent and an appropriate entry is made into the reference file regarding the availability of said connection session or the like. However, Li in no way states, teaches or describes how the connections in the network are established. That is, there is no specific step with regards to whether a virtual link can be established and if one cannot be established through a router, establishing said virtual link through a neighbor of said router to the network backbone per the subject invention. In other words, D'Souza is essentially one step removed from

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the subject invention. Whereas the subject invention is concerned with and provides a method for determining how to establish connections in a network (either a physically existing connection or the establishing of a virtual connection via a neighbor), D'Souza is concerned with managing such connections after they are established and subsequently updating them if new connections are created or old connections are lost.

For example, the Examiner offered sections of Column 2, Lines 55-65 discuss merely the initialization of the network and checking the status of same (whether the addition or deletion of a router or link has occurred to determine how the routers are interconnected). If a new route is found, an alarm is generated and the new route is added to the reference library (Column 9, Lines 16-23). Additionally, and more importantly, if there is a situation where an OSPF neighbor acquired from the reference file does not exist in the system currently, an alarm is generated to alert network manager to the loss of said neighbor. Thereafter, the monitoring system deletes the OSPF neighbor from the reference file (see Column 9, Lines 38-47). Accordingly, it is respectfully submitted that D'Souza makes no attempt to establish a virtual connection, but merely updates a reference file to the availability of other connections still existing in the network. The fact that an alarm is sent and a deletion of a neighbor occurs supports a conclusion that D'Souza makes no active attempts to establish new links, but merely updates information about the network after it has already occurred. Accordingly, it is respectfully submitted that the scope and purpose of D'Souza is different from that of the subject application. These aspects were presented to Examiner Nguyen in a September 7, 2004 teleconference and the Examiner concurred with Applicant's analysis. Accordingly, it is respectfully submitted that the prima facia case of obviousness has not been established and that the references have not been shown to teach what is claimed. Further, one skilled in the art would not combine Li and D'Souza to arrive at the subject invention because the resultant combination is also defective. That is, the combination of Li and D'Souza results in a monitoring

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system that updates a list in a reference file of viable connections and gives appropriate warning messages which is not that which is claimed in the subject invention.

As such, the Applicant submits that claims 1, 3, 4, 5, 7 and 8 are not obvious and fully satisfy the requirements under 35 U.S.C. § 103 and are patentable thereunder. Furthermore, claims 2 and 6 depend, either directly or indirectly, from independent said independent claims and recite additional features thereof. As such, and for at least the same reasons discussed above, the Applicant submits that these dependent claims also fully satisfy the requirements under 35 U.S.C. § 103 and are patentable thereunder. Therefore, the Applicant respectfully requests that the rejection be withdrawn.
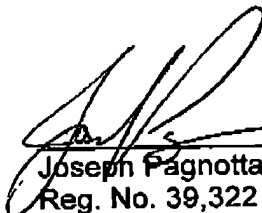
CONCLUSION

Thus, the Applicant submits that claims 1-8 are in condition for allowance. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Mr. Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

September 10, 2004

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I hereby certify that this correspondence is being transmitted by facsimile under 37 C.F.R. §1.8 on _9-10-04_ and is addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Facsimile No. _703-872-9306_.	_C. Wilson_ Signature _C. WILSON_ Printed Name of Person Signing _September 10, 2004_ Date of signature

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